



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0227]

RIN 1625-AA00

Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays, Cavalier Golf & Yacht Club Independence Day Fireworks Display, Broad Bay; Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone regulation for one recurring fireworks display within the Fifth Coast Guard District. This regulation refers to the fireworks display event that takes place on the navigable waters of Broad Bay in Virginia Beach, VA. This action is necessary to provide for the safety of life on navigable waters during the Cavalier Golf & Yacht Club Independence Day Fireworks Display. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with fireworks displays.

DATES: This rule will be effective on July 1, 2012 and enforced from 9:30 p.m. to 10 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0227 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0227 in the "Search" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757-668-5581, e-mail Hector.L.Cintron@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On May 9, 2012, we published a notice of proposed rulemaking (NPRM) entitled Cavalier Golf & Yacht Club Independence Day Fireworks Display, Broad Bay; Virginia Beach, Virginia in the Federal Register (76 FR 27156). We received no comments on the proposed rule. No public meeting was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

B. Basis and Purpose

On July 1, 2012 Cavalier Golf & Yacht Club will host a fireworks display on the shoreline of the navigable waters of Broad Bay in Virginia Beach, VA. The fireworks will be

launched from a shore based platform centered on position 36°52'08"N/076°00'46"W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted on all navigable waters within 400 yard radius of the fireworks launch site.

C. Discussion of Comments, Changes and the Final Rule

The Captain of the Port Hampton Roads has changed the enforcement period of the safety zone for one recurring fireworks event within the Fifth Coast Guard District. This regulation applies to the July 4th fireworks event listed at (c)(4), in the Table to 33 CFR 165.506. The event will not be taking place on July 4th.

The Table to 33 CFR 165.506, event (c)(4), establishes the enforcement date for the fireworks event held in Virginia Beach, VA on specified waters of the Broad Bay within the area bounded by 400 yard radius centered on position 36°52'08"N/076°00'46"W (NAD 1983). The area of the safety zone enforcement will not change; the date of enforcement of the safety zone has changed. This temporary safety zone will be enforced from 9:30 p.m. to 10 p.m. on July 1, 2012. In the interest of public safety, general

navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so

mariners can adjust their plans accordingly.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the Broad Bay from 9:30 p.m. until 10 p.m. on July 1, 2012. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only one-half hour in the evening, when vessel traffic is low. Although the safety zone would apply to the entirety of Broad Bay, traffic would be allowed to pass through the zone with the

permission of the Captain of the Port Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not

retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects

of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately

affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.506, in "Table to § 165.506", under "(c) Coast Guard Sector Hampton Roads-COTP Zone," suspend number 4, and add number 23, to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District
Fireworks Displays.

* * * * *

Table To § 165.506

[All coordinates listed in the Table to § 165.506 reference
Datum NAD 1983]

Number	Date	Location	Regulated area
*	* *	* *	* *
(c) Coast Guard Sector Hampton Roads - COTP Zone			
*	* *	* *	* *
23.	July 1st	Broad Bay, Virginia Beach, VA Safety Zone.	All Waters of the Broad Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52'08" N, longitude 076°00'46" W, located on the shoreline near Cavalier Golf and Yacht Club, Virginia Beach, Virginia.

Dated: June 11, 2012

Mark S. Ogle
Captain, U.S. Coast Guard
Captain of the Port Hampton Roads

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